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# TSMT UPDATE

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| Goods & Services Tax | One Nation One Tax | *Transitional Provisions*

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## *Foreword*

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In a staggering move, the parliament has passed all the 4 GST Bills (CGST, IGST, UTGST & Compensation to States Bill) tabled for discussion on 29th of March, 2017. This takes us a step closer to the envisaged implementation date of 1st July, 2017.

This now places significant importance for all businesses to be organized to face the transition and overcome the functional and practical difficulties.



Due care has to be exercised by the businesses to tackle each curve ball thrown at them during the transition phase. In this regard, it is of vital importance to understand the provisions of the law governing such transition and align business tax structures accordingly.

We are presenting the transition provisions of the GST law in a simple Q&A format for better understanding of the subject.

### **Definitions:**

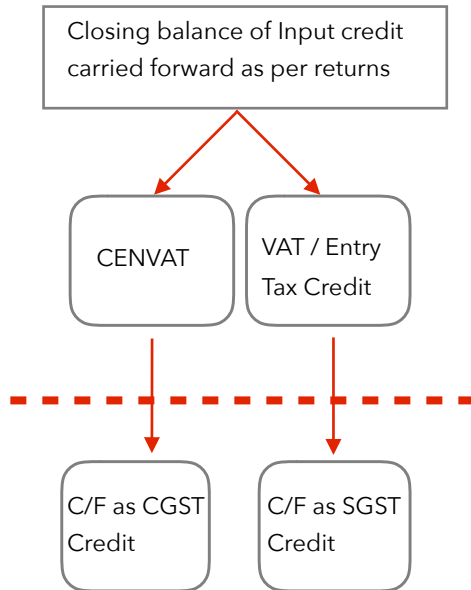
**Appointed day** - means, the date on which the provision of the GST act would come into force.

**Existing laws** - means, current laws which would be subsumed under GST  
E.g. - VAT, CST, Central Excise, Service Tax etc

**Registered Person** - means a person registered under the GST Law.

## Transitional Provisions Decoded - FAQ

### 1. What happens to my current Input Tax Credit (ITC) under various laws?



#### **Carry forward of CENVAT Credit (Conditions prescribed)**

1. Credit to be carried forward only if such credit is also admissible under GST and the registered taxable person is not paying tax under Composition scheme under GST.
2. Requisite returns have been filed under the existing law for the period of six months immediately preceding the appointed day.
3. VAT Input Credit attributable to Interstate sales wherein there is a requirement for filing forms such as Form-C, Form-I, Form-H, Form-F etc., can be carried forward under SGST only if such forms are filed within the prescribed time.

#### **Note:**

- It appears that credit of KKC, Higher Education Cess and Secondary Higher Education Cess cannot be carried forward under GST
- Credit can be carried forward to GST only if such credit was admissible under existing laws.
- The transitional provisions contained in section 139 to 142 of the CGST Law have been made applicable even under the IGST law. This has created some confusion as to whether existing credits are to be carried forward under CGST or under IGST. However, the draft rules released seem to indicate that the credits are to be carried forward under the CGST law.

### **2. I have availed only partial ITC relating to capital goods. How do I avail such remaining credit?**

Currently, CENVAT credit on capital goods is availed at the rate of 50% in the year of purchase and balance in the next year. Such balance credit will therefore, not be reflected in the returns filed. GST law specifically provides that such unavailed credit can be carried forward under the GST law as on the appointed date.

Every registered person entitled to carry forward existing credit under GST is required to submit an online application in Form **GST TRANS-1** within sixty days of the appointed day

This would apply to purchases of Capital Goods made during FY 17-18 as well, wherein the balance unavailed credit shall be allowed to be carried forward as on the appointed date even though this would mean that the entire credit on Capital Goods is availed within the same Financial Year.

### 3. What happens to my ITC if I have a Centralized registration?



ITC carried forward under CGST may be transferred to any of the registered person having the same PAN.

The mechanism for such transfer has not yet been prescribed.

### 4. I am exempt from paying taxes under the existing tax laws. However, I am liable to pay taxes under GST. Can I avail the ITC paid under the existing laws ?

Any eligible person who is currently exempt under the existing laws is eligible to avail credit of duties in respect of inputs held in stock and inputs contained in Semi-finished and finished goods held in stock as on appointed date.

#### **Following are the conditions prescribed in this regard:**

- Such inputs are to be used in making taxable supplies under GST.
- Such inputs are eligible for input tax credit under GST
- Possession of Invoice or other prescribed documents evidencing payment of duty under the existing law. Such invoice were issued not earlier than twelve months immediately preceding the appointed day
- Supplier should not be eligible for any abatement under GST
- Supplier should pass on the benefit of such credit by way of reduced prices to the recipient.

#### **Eligible Persons**

1. Persons not registered under existing law
2. Manufacturer of exempted goods
3. Service provider providing exempted services
4. Works Contractor availing benefit under notification 26/2012
5. First Stage Dealer, Second Stage Dealer and Registered Importer
6. Depot of Manufacturer

**Note:** Providers of Works Contract service covered under notification. 24/2012 dt 06.06.2012, wherein Service Tax is being remitted on 40% of the value for original works and 70% for finishing works etc., seem to be inadvertently excluded from the aforesaid benefit.

### 5. What happens if I receive Tax Invoice under the existing laws after the appointed day?

Credit of duty paid under the existing law can be taken under GST, subject to the condition that the invoice or any other duty or tax paying document of the same is recorded in the books of account within a period of thirty days from the appointed day.

A separate statement, providing details of such credits availed needs to be furnished

### 6. Currently I am paying tax under Composition Scheme, can I continue the same under GST Law?

A registered person, whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees may opt to pay tax at such rate as may be prescribed. *(Not more than 1% for manufacturer, 2.5% for restaurant sector and 0.5% for other suppliers.)*

If the prescribed turnover limit is exceeded, then Composition under GST cannot be availed of.

However, such person will now be allowed to take credit in respect of inputs held in stock and inputs contained in Semi-finished and finished goods held in stock as on appointed date.

The conditions for availing such credits are specified in Question No. 3

#### Eligibility conditions for Composition :

1. Not engaged in supply of service other than restaurant service
2. Not engaged in making supply of goods not which are leviable to tax
3. Not engaged in making any supply of goods through E-Commerce operator
4. Not engaged in making Interstate outward supplies of Goods and Services
5. Not manufacturer of goods as may be notified by govt.

### 7. What happens to CENVAT credit reversed on account of non-payment to vendors?

Under the existing law, CENVAT credit needs to be reversed if the payment to vendor is not made within a period of 3 months. However, credit can be reinstated once payment is made.

As per the CGST law, Input tax credit can be reinstated as CGST credit only if the payment to vendors is now made within 3 months from the

This will adversely affect many businesses, where it is customary to hold retention amounts from vendors for long periods of time.

appointed day.

The treatment of transactions entered into before the appointed date, but where the 3 month deadline to make payment falls after the appointed date, is not clear. However, adopting a conservative view, it would be advisable to reverse such credits under the GST law on the expiry of the 3 month deadline.

**8. What happens to goods sent for Job-work before the appointed date, will I be liable to pay GST on return of such goods?**

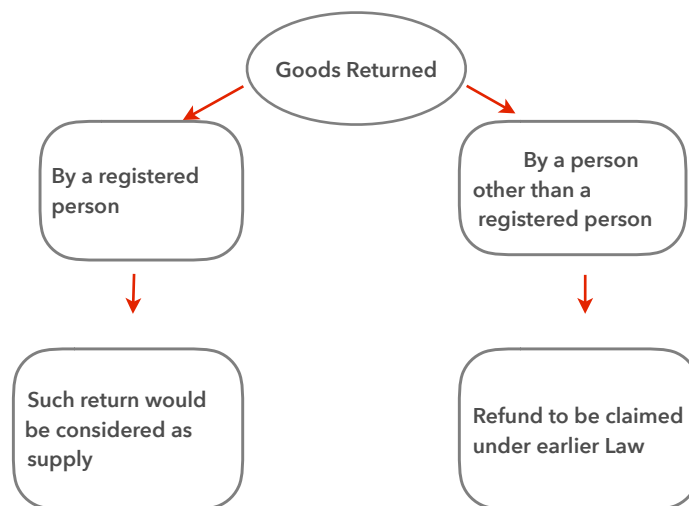
No tax shall be payable, if the such goods, which were cleared for Job work before the appointed date, are returned to the place of business within the period of 6 months from the appointed day.

A Statement needs to be filed by both Manufacturer & Job worker declaring the details of inputs or goods held in stock by the Job worker as on the appointed date in **Form GST TRAN-1**.

In case of Semifinished and Manufactured goods sent for further processing or testing etc., such goods may be directly supplied from the premises of any registered person (Job Worker) within the 6 month time period.

**Precaution:**  
It should be ensured that goods sent for job work is received within the period of 6 months.  
  
If the goods are not received in the period specified, the input tax credit shall be liable to be recovered under GST.

**9. What happens if goods are returned to me on which tax has been paid under the earlier law?**



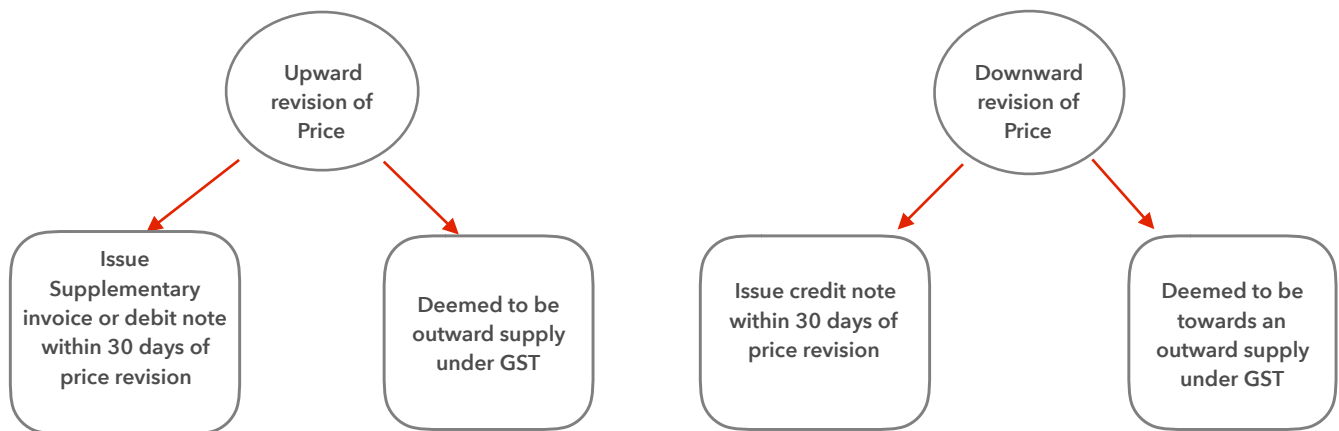
**\*Note:** Procedure to claim refund under the existing law is yet to be prescribed.

**10. I have sent goods on approval basis before the appointed day, how would GST impact such transaction?**

If goods are sent on approval basis not before six months from the appointed day, GST shall not be charged on return of such goods within six months from the appointed day. However, on lapse of the specified time, GST shall be payable by the person returning it or by the supplier, if such goods are not returned.

**11. What happens if in pursuance of a contract entered into prior to the appointed day, the price of any goods or services or both is revised?**

Incase, there is revision of price in relation to goods/services supplied prior to appointed day and such revision is in pursuant to a contract entered prior to the appointed day



Supplementary Invoice, debit note, credit note to be issued as per the format prescribed under GST.

The person issuing the credit note shall be allowed to reduce the tax liability only if the recipient of the credit note has reversed corresponding input tax credit.

**12. What happens to my refund claims under the existing laws?**

Every claim for refund of duty paid under the existing law, shall be disposed of in accordance with the provisions of the existing law. However, where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

**Note:** No refund shall be allowed of any amount where the balance of the said amount as on the appointed day has been carried forward under GST Law.

**13. What happens to my assessments, appeals or adjudication proceedings under the existing law initiated before / after the appointed date?**

Every proceeding of assessments, appeals or adjudication shall be disposed in accordance with the provisions of the existing laws. If any amount is to be refunded in relation to such assessment, appeal or adjudication, the same will be refunded to the claimant in cash under the existing law. However, if any amount is determined to be payable, the same shall be recovered as arrears under the GST Law.

**14. Can I revise my returns under the existing law after the appointed day?**

If any tax is determined to be payable pursuant to such revision, the same shall be recovered under GST law unless recovered under the existing law and the amount so recovered shall not be allowed as ITC under the GST Law. However, if any tax is found to be refundable, the same shall be refunded in cash to the claimant under the existing laws. However, where any claim for refund is fully or partially rejected, the amount so rejected shall lapse.

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